Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling Filed by CTIA Regarding Whether Early Termination Fees Are "Rates Charged" Within 47 U.S.C. § 332(c)(3)(A)	)	WT Docket No. 05-194
Petition for Declaratory Ruling Filed by SunCom, and Opposition and Cross-Petition for Declaratory Ruling Filed by Debra Edwards, Seeking Determination of Whether State Law Claims Regarding Early Termination Fees Are Subject to Preemption Under 47 U.S.C. § 332(c)(3)(A)	)	WT Docket No. 05-193

SPRINT CORPORATION COMMENTS

Luisa L. Lancetti
Vice President, Wireless Regulatory Affairs
Charles W. McKee
General Attorney

Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004
202-585-1949

August 5, 2005

Table of Contents

Summary

Sprint makes the following points in these comments in support of the CTIA and Sun-Com petitions for declaratory ruling regarding the lawfulness of early termination fees ("ETFs"):

1. ETFs promote the public interest. Every wireless customer makes a choice upon subscribing to wireless service whether to order service pursuant to a specified term (plans that ordinarily include an ETF), or a plan with minimal commitments (including no ETFs). Over 90 percent of wireless customers – over 163 million Americans – have chosen the term/ETF plan alternatives, because of the benefits they receive from such plans (*e.g.*, heavily discounted phones, lower per-minute pricing). American consumers – and younger and lower-income customers in particular – would be harmed if carriers were prohibited from using ETFs and thereby compelled to restructure their rates (*e.g.*, eliminate handset subsidies, increase per-minute prices).

2. Section 332(c)(3) expressly preempts any State regulation of ETFs and FCC and judicial precedent so holds. Congress has expressly preempted States from exercising "any authority to regulate . . . the rates charges by" wireless carriers. Both the FCC and the courts have recognized that ETFs are part of the rates (including rate structure) that a carrier establishes for its services.

3. The FCC would be required to preempt State ETF regulation even if ETFs were now considered to be an "other term and condition" of wireless service. Congress has expanded FCC authority over the wireless industry to include both interstate and intrastate services, and it has specifically directed the FCC to establish a "Federal regulatory framework" for wireless services with the "appropriate level of regulation." Preemption of State ETF regulation is necessary because such regulation inherently would conflict with the Federal framework that the FCC has established. Indeed, the viability of national wireless plans would be put at risk if each State could decide whether ETFs could be used in their respective jurisdictions.

4. A declaratory ruling is necessary to preserve the continued availability of national wireless plans. Courts have reached conflicting decisions over the issue of State authority over wireless ETFs. Congress has charged the FCC, not the courts (federal or state) to "establish a Federal regulatory framework to govern the offering of all commercial mobile services." A declaratory ruling by the nation's expert agency concerning the scope of state law over ETFs is thus essential to ensure the establishment of a uniform, federal framework governing all wireless services, benefiting consumers.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling Filed by CTIA Regarding Whether Early Termination Fees Are "Rates Charged" Within 47 U.S.C. § 332(c)(3)(A)	)	WT Docket No. 05-194
Petition for Declaratory Ruling Filed by SunCom, and Opposition and Cross-Petition for Declaratory Ruling Filed by Debra Edwards, Seeking Determination of Whether State Law Claims Regarding Early Termination Fees Are Subject to Preemption Under 47 U.S.C. § 332(c)(3)(A)	)	WT Docket No. 05-193

SPRINT COMMENTS

Sprint Corporation submits these comments in support of the declaratory ruling petition filed by CTIA – The Wireless Association ("CTIA"), which asks the Commission to confirm that federal law preempts States from exercising any authority over the lawfulness or reasonableness of early termination fees ("ETFs") that wireless carriers include as an integral component of their rates for certain of their service plans.[1] To the extent that the petition filed by SunCom Wireless Operating Company ("SunCom") raises the same issues regarding a commercial mobile radio service ("CMRS") provider's assessment of ETFs within the context of a term contract, Sprint likewise supports grant of the SunCom petition.[2]

---

[1] *See* Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling Filed by CTIA Regarding Whether Early Termination Fees Are "Rates Charged Within 47 U.S.C. § 332(c)(3)(A*), WT Docket No. 05-194, DA 05-1389, 20 FCC Rcd 9100 (May 18, 2005), *published in* 70 Fed. Reg. 38926 (July 6, 2005).

[2] *See* Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling Filed by SunCom, and Opposition and Cross-Petition for Declaratory Ruling Filed by Debra Edwards, Seeking Determination of Whether State Law Claims Regarding Early*

I. CUSTOMERS OVERWHELMINGLY PREFER TERM CONTRACTS (WHICH INCLUDE ETFs) OVER HIGHER PRICED MONTH-TO-MONTH ARRANGEMENTS (WITHOUT ETFs)

Consumers interested in wireless service enjoy a wide range of choices, including options regarding service providers, service plans, handsets and features. A threshold decision every new customer makes is how much they are willing pay for a handset and service. In order to maximize the choices available to consumers and to meet expressed customer demands, carriers offer a wide range of service plans. Some of these offerings, such as prepaid service, allow a customer to terminate the plan at any time, without paying an ETF. Other offerings, such as most postpaid services, are generally provided pursuant to a term contract, and these contracts ordinarily include an ETF. Sprint also offers customers yet an additional choice: for an additional $10 monthly, they can choose a post-pay term plan without an ETF.[3]

Over 90 percent of this nation's 182+ million wireless customers have chosen post pay term plans over the prepaid, non-term alternative – even though term plans typically include an ETF.[4] The reason for this choice is understandable. Term customers ordinarily receive a free (or heavily discounted) phone, and the Commission has already found that subsidized handsets

---

Termination Fees Are Subject to Preemption Under 47 U.S.C. § 332(c)(3)(A), WT Docket No. 05-193, DA 05-1390, 20 FCC Rcd 9103 (May 18, 2005), *published in* 70 Fed. Reg. 38926 (July 7, 2005). Sprint is not familiar with the specific facts that are the subject of the SunCom litigation and does not take a position on more specific issues raised in that petition.

[3] Because ETFs are not a part of these rate plans, the amount of subsidy provided on the handset also may be reduced or eliminated, and some features/services may be unavailable or available only at a higher price.

[4] *See* RCR WIRELESS NEWS, "Cingular Refines Prepaid Offerings as Competition Intensifies," at 4 (May 30, 2005)("Merrill Lynch recently reported that prepaid . . . made up more than 8 percent of all wireless subscribers as of March 31."); *Ninth Annual CMRS Competition Report*, 19 FCC Rcd 20597 at ¶ 116 (2004)("One analyst estimated that 6 percent of U.S. wireless phone users subscribed to prepaid plans in 2003."). Actually, the number of customers who would prefer a postpaid contract plan is likely higher than 90 percent when one considers that a percentage of prepaid customers have credit problems that may make them ineligible to use a contract plan.

are "a legitimate promotional strategy that benefits, rather than harms, the public interest."[5] Term customers also receive a lower price during the term of the contract. "Postpaid minutes are, on average, at least 30 percent to 40 percent less expensive than prepaid minutes."[6] Carriers can provide these benefits to postpaid customers in part because they have assurance either that the subscription will last as long as the customer's term commitment applies or the customer will fulfill his or her contractual obligations by paying the ETF if he or she decides to terminate service before the end of the contract term.[7]

Wireless customer acquisition costs, including handset subsidies, "typically run between $300 and $400 per subscriber."[8] Assuming for this analysis a monthly average revenue per unit ("ARPU") of $50,[9] and further assuming that the cost of service constitutes 80 percent of revenues,[10] it would take 30 months for a carrier to recover customer acquisition costs of $300 (40 months if such costs are $400) – and during this extended period, the carrier would receive noth-

---

5 *CMRS Resale Reconsideration Order*, 14 FCC Rcd 16340, 16454 ¶ 29 (1999).

6 ATLANTA JOURNAL AND CONSTITUTION, "Wireless Providers Increasingly Target Prepaying Customers" (May 24, 2005). *See also Seventh Annual CMRS Competition Report*, 17 FCC Rcd 12985, 13015 (2002)("[P]ostpaid plan rates are lower, the phone selection is greater, and the promotions are better than those available to prepaid subscribers.").

7 In the event the customer does decide to terminate service early, the ETF provides an alternative means for a customer to perform his obligations under the term plan.

8 RCR WIRELESS NEWS, "Carriers Must Reduce Acquisition Costs to Make Thrifty Customers Profitable," at 14 (March 7, 2005). *See also* RCR WIRELESS NEWS, "Rural Cellular Loses Customers Due to GSM Introduction Glitches" (Aug. 2, 2005)("[A]cquisition cost per customer . . . jumped from $454 last year to $515 this year.").

9 *See Ninth Annual CMRS Competition Report*, 19 FCC Rcd 20597 at ¶ 172 (2004) (Industry-wide APRU in December 2003 was $49.91).

10 Wireless operating costs in 2002 exceeded 82 cents for every $1 of revenue (based on data from the three publicly listed wireless carriers). *See* Thomas W. Hazlett, "Regulating Wireless Phones in California: An Economic Analysis," at 25 (April 9, 2003)("Hazlett Analysis").

ing for the capital it invested to establish the network itself and nothing for profit.[11] The ETF, accordingly, is a critical element of a carrier's rates to help ensure it recovers its costs.

The Edwards class action attorneys would have the Commission believe that customers find ETFs objectionable – even though *over 90 percent of them voluntarily choose postpaid contracts which generally include an ETF*. In support, they state that ETFs "generate more consumer complaints in the industry than almost any other form of conduct by cellular telephone service providers."[12]

The facts, however, do not support this conclusion. Last year (in 2004), 3,948 wireless customers filed FCC complaints involving "Contract – Early Termination" issues. Even assuming that all of these complaints had merit,[13] and further ignoring that some portion of these complaints involved a carrier terminating customers for cause,[14] this constitutes a complaint rate of 0.002 percent – or one complaint for every 45,500 wireless customers. A complaint rate at this

---

[11] This helps explain the importance of maintaining subscribers over time. *See* Hazlett Analysis at 25 ("Acquiring a customer can only be profitable if it builds a subscriber base, a base that must extend far beyond the 12 to 24 months of the contract. Operators extend generous terms to initiate such relationships, betting they can convince many customers to renew their subscriptions, that their experience will help enlist yet other customers, that customers will be enticed to purchase additional services, and that future economies can be executed to lower the cost of service delivery.").

[12] Edwards Opposition at 13. *See also id.* at 55-57.

[13] *But see* FCC News, *Quarterly Report on Informal Consumer Inquiries and Complaints Released*, at 1 (March 4, 2005)("The existence of a complaint does not necessarily indicate wrongdoing by the company at issue.").

[14] The "Contract – Early Termination" category includes complaints involving "termination of service by carrier: carrier's right to disconnect a subscriber's service prior to the end of a specified contract term." *Id.* at 5.

level does not support the claim that customers view ETF as serious concern or unreasonable practice.[15]

To the contrary, customer behavior confirms that customers do not view ETFs as problematic. Since Sprint entered the wireless market in 1996, the number of total wireless customers has more than quadrupled and wireless usage (minutes of use) has increased twenty-fold. Sprint submits that this dramatic – indeed, phenomenal – growth occurred precisely because customers chose the benefits of term plans (which generally include ETFs as an integral part of the overall rate for service).[16]

It is also important to emphasize that the American consumer would be affirmatively harmed by the loss of ETFs as a rate component. As CTIA correctly observes, "[w]ithout the availability of the ETF to mitigate losses from early service termination, such [long-term] plans [with their lower initial and monthly payments] would cease to exist in their present form."[17] And it would be the younger and lower-income customers that would be harmed the most if carriers were prohibited from using ETFs and thereby compelled to restructure their service offerings (*e.g.*, eliminate handset subsidies, increase per-minute prices).

---

15 It is also important for the FCC to remember that every mass-market service provider will have some disgruntled customers. *See*, Thomas W. Hazlett, "Regulating Wireless Phones in California: An Economic Analysis," at 43 (April 9, 2003).

16 There is no evidence to support the Edwards' attorneys' assertions that ETFs constitute "a restraint of trade" and "deter customers from making an informed choice among competing providers of services in a competitive marketplace." Edwards Opposition at 13 and 57-58. Completely unsupported and nonsensical is the additional assertion that ETFs "deter customers from making an informed choice among competing providers of services in a competitive marketplace." *Id.* at 13. In fact, ETFs have nothing to do with consumers making "an informed choice" of service providers.

17 CTIA Petition at i.

II. FEDERAL LAW IS CLEAR: STATES HAVE NO AUTHORITY TO CHALLENGE THE LAWFULNESS OR REASONABLENESS OF WIRELESS SERVICE ETFS

Section 332(c)(3) of the Communications Act expressly preempts any and all state regulation of wireless rates, which includes state law challenges to the lawfulness or reasonableness of ETFs. Even if, however, the Commission now changes course and concludes that ETFs constitute an "other term and condition" of wireless service, rather than an integral part of the rate for wireless service, the Commission must still preempt such state regulation to fulfill the Congressional directive that it establish a federal regulatory framework for wireless services.

It is important to emphasize that federal preemption does *not* deprive any customer of a legal remedy if he or she believes a particular ETF imposed by a particular carrier is unreasonable. Wireless carriers are common carriers,[18] and Section 201(b) of the Communications Act prohibits a common carrier from engaging in any "unjust or unreasonable practice."[19] Thus, the *only* effect of federal preemption on customers is that complaints must be filed under federal law (rather than state law) and that customers must pursue relief in a federal forum.[20] This federal approach to remedies, however, is entirely consistent with the Congressional directive that the Commission "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[21]

---

18 *See* 47 U.S.C. § 332(c)(1)(A)("A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter.").

19 *See id.* at § 201(b).

20 *See, e.g., Kiefer* v. *Paging Network*, 16 FCC Rcd 19129 (2001)(FCC entertains Section 208 complaint alleging that the assessment of a late fee is an unreasonable practice under Section 201(b)).

21 H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. at 490 (1993).

A. CONGRESS HAS EXPRESSLY DIVESTED STATES OF "ANY AUTHORITY" OVER THE "RATES CHARGED" BY WIRELESS CARRIERS, AND ETFS ARE ENCOMPASSED WITHIN THIS PROHIBITION

Congress has determined unequivocally that "no State" shall have "any authority" to regulate the "rates charged by" any wireless carrier. Section 332(c)(3) of the Communications Act provides in relevant part:

> [N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . .[22]

Federal appellate courts have recognized that there can be "no doubt that Congress intended complete preemption" over the regulation of wireless service rates and entry.[23] It is also apparent from the statutory language that this express Congressional preemption is extensive in scope. Section 332(c)(3) bars States from "any authority to regulate" wireless rates. The word, regulate, is defined as "bring[ing] under the control of law or constituted authority."[24] Thus, any State attempt, including attempts by state courts or by state law claims,[25] to challenge the lawfulness or reasonableness of an ETF necessarily constitutes regulation expressly preempted by Section 332(c)(3).

In addition, the Commission "consistently has interpreted the rate regulation provision of the statue to be broad in scope" and that "the proscription of state rate regulation extends to regu-

---

22 47 U.S.C. § 332(c)(3)(A).

23 *Bastien* v. *AT&T Wireless Services,* 205 F.3d 983, 986 (7th Cir. 2000).

24 WEBSTER'S NEW COLLEGIATE DICTIONARY (G.& C. Merriam Co. 1981). *See also* BLACK'S LAW DICTIONARY at 668 (abridged 5th ed., 1983)(Regulate is defined to include "to subject to governing principles or laws."). The Edwards attorneys' provide no support for their assertion that the definition of regulate should be limited to "direct price controls." *See* Edwards Opposition at 21.

25 *See Wireless Consumers Alliance,* 15 FCC Rcd 17021, 17028 ¶ 13 (2000)("Section 332(c)(3)(A) bars state regulation of, and thus lawsuits regulating, the entry of or the rates or rate structures of CMRS providers.").

lation of 'rate levels' and 'rate structures' for CMRS."[26] This FCC ruling is also consistent with the decisions of the U.S. Supreme Court, which has also held that the word "rate" in the Communications Act should be construed broadly.[27]

CTIA demonstrates in its petition that States are preempted from regulating wireless service ETFs because an ETF constitutes a "'rate charged by [a] commercial mobile service' under Section 332(c)(3)(A) because it is an amount of money that the customer agrees to pay a wireless provider for the services and equipment previously provided by the carrier":

> Because ETFs are part of the economic exchange between the wireless carrier and the subscriber when the contract is formed, their invalidation or modification alters the price agreed to between the parties to the detriment of the wireless carrier. A state court order refunding, reducing, modifying, or eliminating ETFs is nothing more than a forced rebate or a forward-looking reduction of the prices charged for service. . . . ETFs are rates because they are part of the total consideration the customer agrees to provide in exchange for service.[28]

Indeed, the Commission has recognized ETFs are a "principal component[] of the exchange for reduced rates" and a "valid *quid pro quo* for the rate reductions included in long-term [contract] plans."[29] In this regard, the federal D.C. Circuit Court of Appeals has also explicitly

---

[26] *NASUCA Declaratory Order,* 20 FCC Rcd 6448 at ¶ 30 (March 18, 2005).

[27] *See AT&T* v. *Central Office Telephone,* 524 U.S. 214, 233 (1998)("Rates . . . do not exist in isolation. They have meaning only when one knows the services to which they are attached. Any claim for excessive rates can be couched as a claim for inadequate services and vice versa."). *See also Bastien* v. *AT&T Wireless,* 205 F.3d at 988 ("In practice, most consumer complaints will involve the rates charged by telephone companies or their quality of services."). *Compare Louisiana Public Service Comm'n,* 476 U.S. 355, 371-72 (1986)(The word "charges" in the Act should be interpreted broadly).

[28] CTIA Petition at 11-15.

[29] *Ryder Communications* v. *AT&T,* 18 FCC Rcd 13603, 13616 ¶ 28, 13617 ¶ 33 (2003). *See also California Rate Petition Denial Order,* 10 FCC Rcd 7486, 7536 ¶ 112 (1995)(ETFs are a "component" of cellular prices."); *Western Union,* 76 F.C.C. 372, 383 n.8 (1980)(FCC characterizes ETF as a "non-recurring charge."). The FCC has noted that ETFs are "mutually beneficial" because "customers enjoy discounted and stable priced services over the life of the contract term," while carriers are given "a measure of certainty" as they have some assurance that "costs

held that "cancellation and discontinuance charges are part of the 'rates'" that a carrier establishes for its service and that the FCC "reasonably found that [ETFs] are 'rates'":

> A "rate" is a charge to a customer to receive service. . . . Part of AT&T's cost of providing . . . service is the cost incurred from . . . early termination of service. . . . [ETFs] are designed to unbundle these discrete costs and impose them directly on the customers who caused AT&T to incur the costs. This adjustment in billing does not mean that these costs items are not part of the charge to the customer to receive interconnection service.[30]

CTIA further demonstrates that there is a second, independent reason that ETFs are rates within the scope of Section 332(c)(3): they are "an integral component of the rate structures pursuant to which wireless service is provided to the vast majority of subscribers":

> Indeed, the fact that other rate elements would have to be adjusted upward in response to an order in favor of the plaintiffs in the pending cases conclusively demonstrates that ETFs are part of the overall rate charged within the meaning of Section 332(c)(3)(A).[31]

The Edwards class action attorneys go to great lengths in suggesting that state litigation over the lawfulness of ETFs does not constitute prohibited rate regulation.[32] But their argument is based on a mischaracterization of FCC orders.[33] And neither their comments nor their sup-

---

will be recouped in the event a customer fails to utilize the service for the stipulated period of time." *Deployment of Advanced Wireline Services,* 16 FCC Rcd 16978, 17400 ¶ 692 (2003).

30 *MCI* v. *FCC*, 822 F.3d 80, 86 (D.C. Cir. 1987).

31 CTIA Petition at 15-19.

32 *See* Edwards Opposition of 20-41.

33 For example, the Edwards attorneys cite a 1995 order for the proposition that "the Commission noted [that ETFs] were part of the 'terms and conditions' of service" (*id*. at 23), when, in fact, the FCC explicitly recognized that "termination charges" are a "component of cellular prices." *California Rate Petition Denial Order,* 10 FCC Rcd at 7536 ¶ 112. Similarly, the Edwards attorneys cite the *Intermodal Porting Order* for the proposition that "the Commission has found that 'early termination fees' are distinct from 'rates' and other matters." Opposition at 33. In fact, the FCC made no such distinction in that order; it rather confirmed that "[c]arriers may include provisions in their customer contracts on issues such as early termination." *Intermodal Porting Order,* 18 FCC Rcd 20971, 20976 ¶ 15 (2003).

plemental comments even mention the legal authority discussed above.[34] Based on prior Commission and judicial precedent, the conclusion is inescapable that ETFs contained in wireless service contracts are a rate within the scope of Section 332(c)(3). Accordingly, States have been expressly preempted from exercising "any authority" over ETFs.[35]

B. In Order to Discharge Congress' Directive, the Commission Must Also Preempt All State Authority Even If ETFs Were Now to Be Deemed an "Other Term and Condition" of Wireless Service

Sprint does not believe a credible argument can be made that an ETF is a non-rate "other term and condition" of wireless service, as discussed above. Nevertheless, assuming *arguendo* that the Commission was to reverse its prior precedent and now agree with class action attorneys on this point, it would still be required to preempt all State regulation of ETFs.

1. Congress Has Charged the FCC With Establishing a "Federal Regulatory Framework" for the Wireless Industry

Congress has determined that the regulatory regime applied to wireless services should be different than the regime applied to landline telecommunications services. Specifically, Congress has given the FCC plenary authority over wireless carriers and directed it to "establish a *Federal* regulatory framework to govern the offering of *all* commercial mobile services."[36]

The 1934 Communications Act established a dual jurisdictional regime for the regulation of telecommunications services. The FCC was given exclusive authority to regulate interstate services,[37] while states were empowered to regulate intrastate services.[38] The Supreme Court

---

34 *See* Edwards Opposition (March 4, 2005); Edwards Comments (June 10, 2005).

35 *See* 47 U.S.C. § 332(c)(3)(A).

36 H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. at 490 (1993)(emphasis added).

37 Section 2(a) of the Act specifically grants the FCC jurisdiction over "all interstate and foreign communications by wireless and radio." 47 U.S.C. § 152(a).

38 *See* 47 U.S.C. § 152(b).

held in 1986 that under this dual jurisdictional regime, FCC authority over intrastate services ordinarily is "fenced off" – except when (a) it is "not possible to separate the interstate and the intrastate components of the asserted FCC regulation," or (b) state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[39]

Congress "significantly changed the regulatory framework for CMRS" in the Omnibus Budget Reconciliation Act of 1993.[40] Specifically, in this amendment to the 1934 Act, Congress charged the FCC with establishing "a Federal regulatory framework to govern the offering of all commercial mobile services."[41] Congress deemed a national framework necessary to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[42] So the FCC could establish this federal framework for CMRS, Congress expanded FCC authority to include jurisdiction over intrastate wireless services. It did so by amending Section 2(b) of the Act – the statutory source for all state authority over telecommunications carriers.[43] As the Commission later explained:

---

39 *Louisiana Public Service Comm'n* v. *FCC*, 476 U.S. 355, 370, 376 n.4 (1986). *See also NARUC* v. *FCC*, 880 F.2d 422, 430-31 (D.C. Cir. 1989)(FCC preemption of state intrastate regulation is proper if "the state regulation negates a valid federal policy" and it is "clear that certain otherwise legitimate state actions regulating intrastate telephone service could interfere with the Commission's achievement of its valid goal of providing interstate telephone users with the benefits of a free market and free choice."); *Computer & Communications Industry Ass'n* v. *FCC*, 693 F.2d 198, 214 (D.C. Cir. 1982)("Courts have consistently held that when state regulation of intrastate equipment or facilities would interfere with achievement of a federal regulatory goal, the Commission's jurisdiction is paramount.").

40 *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd 9610, 9640 ¶ 84 (2001).

41 H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess., at 490 (1993).

42 H.R. REP. NO. 103-111, 103d Cong., 1st Sess., at 260 (1993).

43 As amended, Section 2(b) now provides, "Except as provided in . . . section 332 of this title . . . , nothing in this chapter shall be construed to apply or to give the [FCC] jurisdiction with respect to . . . intrastate communication service by wire or radio." 47 U.S.C. § 152(b).

> [I]n the 1993 Budget Act, Congress also added an exception to section 2(b) of the Communications Act. Section 2(b) generally reserves to the states jurisdiction over intrastate communication service by wire or radio of any carrier. The 1993 Budget Act amended section 2(b) to exempt section 332 from its provisions.[44]

In other words, Congress gave the FCC plenary authority over "all commercial mobile services," including intrastate wireless services, by tearing down the "fence" that historically barred the FCC from authority over intrastate services and by exempting wireless services in part from the system of dual state and federal regulation that governs landline telecommunication services.[45]

Importantly, in the 1993 Budget Act, Congress also expressly preempted States from exercising "any authority" over CMRS rates and entry. Although Congress determined that States may regulate the "other terms and conditions" of CMRS,[46] this reservation of State authority remains subject to general preemption law. Indeed, the Commission recognized in implementing the 1993 Budget Act that it has both the authority and Congressional mandate to preempt State

---

44 *Unified Intercarrier Compensation NPRM,* 16 FCC Rcd at 9640 ¶ 84.

45 As the FCC stated recently, the 1993 Budget Act amendments were designed to establish "a uniform national regulatory policy for CMRS, not a policy that is balkanized state-by-state." FCC Amicus Curiae Brief, *Verizon Wireless* v. *Hatch,* No. 04-3198, at 4 (8th Cir., filed Nov. 12, 2004). *See also Connecticut Rate Regulation Denial Order,* 10 FCC Rcd 7025, 7034 ¶ 14 (1995)("As the legislative history of [the 1993 Budget Act] makes plain, Congress intended those building blocks to establish a *national* regulatory policy for CMRS, not a policy that is balkanized state-by-state.")(emphasis in original).

46 At the time Congress made this reservation of authority, CMRS was a local service. *See* Presentation of Commissioner Kevin J. Martin, *Wireless and Broadband: Trends and Challenges,* Dow Lohnes-Comm Daily Speaker Series, at 1 (Oct. 14, 2004)("Martin Dow Lohnes Presentation"). As Congress envisioned, CMRS has today become a national service. *See id.* at 1-2; *Second Truth-in-Billing Order* at ¶ 31. Thus, preemption of state "other terms and conditions" regulations concerning wireless intrastate billing practices becomes even more imperative so the "Federal regulatory framework" that Congress directed the FCC to establish, and has been established, can be maintained.

regulation of "other terms and conditions" if the state regulation "thwarts or impedes a valid Federal policy."[47]

The 1993 Budget Act is important to this proceeding in a second way. Specifically, not only did Congress expect the FCC to establish a "Federal regulatory regime" for CMRS, but it also expected that the FCC would establish appropriate level of regulation for the CMRS industry. As the Commission explained in implementing the 1993 amendments, Congress wanted to "ensure than an appropriate level of regulation be established and administered for CMRS providers":

> Congress acknowledged that neither traditional state regulation, nor conventional regulation under Title II of the Communications Act, may be necessary in all cases to promote competition or protect consumers in the mobile communications marketplace. * * * [W]e establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers.[48]

As the Commission stated more recently, "[i]n place of traditional public utility regulation, the 1993 Budget Act sought to establish a *competitive nationwide market* for [CMRS] with limited regulation."[49]

The Commission determined in its 1994 order implementing the Budget Act that the rates for wireless service should be driven by competition and market forces rather than by government regulation:

> [F]orbearance [from rate regulation] will foster competition which will expand the consumer benefits of a competitive marketplace. . . . Carriers will be motivated to win customers by offering the best, most economic service packages.[50]

---

47 *Second CMRS Order*, 9 FCC Rcd 1411, 1506 nn. 515, 517 (1994).

48 *Id.* at 1418 ¶¶ 14-15.

49 *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd at 9640 ¶ 84 (emphasis added).

50 *Second CMRS Order*, 9 FCC Rcd at 1479 ¶ 177. In this order, the FCC stated without explanation that "Section 332 does not extend the Commission's jurisdiction to the regulation of

The Commission's reliance on market forces has been undeniably successful. In response to market demands, wireless carriers developed term contract plans (with ETFs), and subscribership and usage has exploded as a result. Wireless subscriptions rose from 16 million customers in 1993 to 161 million customers in 2004.[51] As of 2003, wireless customers sent more than 2 billion text messages a month.[52] 93% of the population lives in counties with three or more wireless competitors.[53]

The FCC has exclusive authority over interstate services and exclusive authority over CMRS rates and entry, including intrastate rates and entry. While the FCC and states share concurrent jurisdiction over the "other terms and conditions" of intrastate wireless service, Congress has specifically charged the FCC with establishing "a Federal regulatory framework" that contains the "appropriate level of regulation." Preemption of state ETF regulation is both consistent with this Congressional mandate and necessary to preserve the success of the current national rate structures of wireless carriers which benefit consumers.

2. Preemption of State ETF Regulation Is Necessary Because Such Regulation Inherently Conflicts With Federal Regulation

The class action attorneys pursuing the Edwards' litigation assume that States can regulate (including prohibit) ETFs if they are classified as an "other term and condition" of service rather than a rate or rate element and thus encompassed within the express rate preemption pro-

---

local CMRS rates." *Id.* at 1480 ¶ 179. This statement is not accurate because Congress removed the Section 2(b) prohibition precisely so the FCC would have plenary authority over all CMRS services, including intrastate services. Indeed, if the FCC possessed no rate authority over intrastate rates, then wireless carrier intrastate rates would be completely deregulated because states lack such rate authority as well under Section 332(c)(3).

51 *See* Martin Dow Lohnes Presentation at 1-2.

52 *Id.*

53 *Id.*

vision in Section 332(c)(3). This assumption is mistaken. Indeed, as the Commission recognized in implementing the 1993 Budget Act, State "other terms and conditions" regulation is still subject to settled conflict preemption law.[54]

The Commission has recognized that federal preemption of State "other terms and conditions" regulation is appropriate "when it is not possible to separate the interstate and intrastate components" of the service at issue,[55] and "where there is outright or actual conflict between federal and state law."[56] Here, a state court ruling that ETFs are unlawful under state law would conflict with federal law.

The Commission has repeatedly recognized that wireless carriers "may include provisions in their contracts on issues such as early termination,"[57] and that it is "proper [for a wireless carrier] to assess charges for contract termination before" the end of the contract term.[58] It has also repeatedly rejected arguments that ETFs are an unreasonable practice under Section

---

54 *See Second CMRS Order*, 9 FCC Rcd 1411, 1596 nn.515 and 517 (1994). *See also Vonage Declaratory Order*, 19 FCC Rcd 22404 at ¶ 19 (2004)("[C]ourts routinely recognize that there may be circumstances where state regulation would necessarily conflict with the Commission's valid exercise of authority.").

55 *See Second CMRS Report*, 9 FCC Rcd at 1506 n.515.

56 *Louisiana Public Service Comm'n* v. *FCC*, 476 U.S. 355, 368 (1986).

57 *Wireless Porting Order*, 18 FCC Rcd 20971, 20976 ¶ 15 (2003), *aff'd Central Texas Telephone* v. *FCC*, 402 F.3d 205 (D.C. Cir. 2005). *See also California Rate Petition Denial Order*, 10 FCC Rcd 7486. 7536 ¶ 112 (1995)("[C]ustomer [wireless] bills are driven in part by other variables, including . . . [early] termination charges.").

58 *See Detroit SMS Limited Partnership*, File No. 29100-CL-L-84, ¶ 10 (July 16, 1985). The FCC has noted that ETFs are "mutually beneficial" because "Providers are given a measure of certainty" and "customers enjoy discounted and stable priced services over the life of the contract term." *Deployment of Advanced Wireline Services*, 16 FCC Rcd 16978, 17400 ¶ 692 (2003).

201(b) of the Communications Act.[59] In fact, the Commission has declared that enforcement of ETFs promotes the "strong public interest in preserving the sanctity of contracts, especially because [an ETF is a] principal component of the exchange for reduced rates":

> There is simply no justification for allowing a customer to negotiate for concessions on price, to sign a contract containing customized provisions that are the product of voluntary agreement, and then to run to the Commission to have the Commission reform a provision of the contract that was a integral part of the quid pro quo bargain which subsequently produces a hardship on the customer.[60]

Importantly, with the Budget Act's modification of Section 2(b) of the Act, the Commission's application of federal law to ETFs applies to both interstate and intrastate wireless services.[61]

A state court ruling that ETFs are unlawful under state law, regardless of the specific law involved (*e.g.*, deceptive practices or unfair debt collection statutes, unconscionability, quantum meruit, unjust enrichment) would necessarily conflict with federal law, which recognizes that ETFs are not simply a reasonable practice, but also promote the "strong public interest in preserving the sanctity of contracts." To permit state law to "trump" federal law concerning ETFs would stand the Supremacy Clause of the U.S. Constitution on its head.

There is a second, independent basis that warrants federal preemption of State ETF regulation. The Commission has recognized that federal preemption of State "other terms and condi-

---

[59] *See, e.g., Ryder Communications* v. *AT&T,* 18 FCC Rcd 13603, 13614 ¶ 23 (2003)(ETFs are not unlawful or unreasonable under the Act; "it is perfectly reasonable under section 201(b) for AT&T to seek the benefit of its bargain – payment by Ryder of the early service termination charges."); *Termination Charge Order,* 100 F.C.C.2d 1298 (1986), *aff'd Equipment Distributors' Coalition* v. *FCC,* 824 F.2d 1197 (D.C. Cir. 1987); *Western Union*, 76 F.C.C. 372, 383 n.8 (1980)("We have, as a matter of course, allowed carriers reasonable latitude in distributing costs as between recurring and non-recurring charges, the latter including . . . termination charges."); *U.S. Cablevision* v. *New York Telephone*, 53 F.C.C.2d 1241, 1243 ¶ 7 (1976)("To require a refund of charges assessed for [early] termination of the facilities would not support any important public policy considerations and would contravene long established principles of tariff law.").

[60] *Ryder Communications* v. *AT&T,* 18 FCC Rcd 13603, 13616 ¶ 28 (2003).

[61] *See* Part II.A, *supra.*

tions" regulation is appropriate when the state regulation "thwarts or impedes a valid Federal policy."[62]

Congress has unequivocally directed the Commission to "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[63] In response, the Commission has adopted a policy of relying on "market forces rather than regulation."[64] This reliance on market forces, the Chairman has noted, has been "an amazing story,"[65] because carriers have been free to develop service plans that the American public wants, including term contracts with ETFs (and in Sprint's case, non-term contracts without ETFs – *albeit* with different prices). Importantly, this "amazing story" occurred in a large measure due to the Commission's forbearance policies and "because of a consistent regulatory treatment throughout the country."[66] As Chairman Martin has correctly observed, because of this consistent national treatment, wireless carriers have been able to develop "uniform service plans, customer service training, billing systems, and 'back office' management tools," and this, in turn, has enabled wireless carriers to develop and use their "economies of scale and scope to offer lower costs to more consumers."[67] Permitting each State to adopt its own policies and laws regarding ETFs necessarily would

---

62 *See Second CMRS Order*, 9 FCC Rcd at 1506 n.515. *See also Louisiana Public Service Comm'n*, 476 U.S. at 368-69 ("Pre-emption occurs . . . where the state law stands as an obstacle to the accomplishment and execution of the full objects of Congress. Pre-emption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation."); *Geier* v. *American Honda Motor*, 529 U.S. 861, 881 (2000)(State tort law duty to install an airbag in a particular car "would have stood as an obstacle to the gradual passive restraint phase-in that the federal regulation deliberately imposed.").

63 H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. at 490 (1993).

64 *New York Rate Regulation Denial Order*, 10 FCC Rcd 8187, 8190 ¶ 18 (1995).

65 *See*, Martin Dow Lohnes Presentation at 1.

66 *Id.* at 6.

67 *Id.*

thwart the Congressional objective of a "Federal regulatory framework" for wireless services, and necessarily would harm customers because national service plans would no longer be possible with State ETF regulation.

Thus, even if the Commission were to now conclude that an ETF constitutes an "other term and condition" rather than a rate, it would still be required to preempt state law because such law would conflict with federal law and federal policies regarding the wireless sector.

C. THE SECTION 414 SAVINGS CLAUSE IS NOT RELEVANT TO THIS PROCEEDING

The Edwards class action attorneys contend that Section 414 of the Communications Act "preserves state law claims such as those involving contract early-termination fees."[68] Section 414, a general savings clause, provides:

> Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provision of this chapter are in addition to such remedies.[69]

The simple response to this Edwards argument is that the U.S. Supreme Court has already rejected it, as has the FCC.

In *AT&T* v. *Central Office Telephone,* 524 U.S. 214 (1998), a customer filed state contract and tort law claims against a long distance carrier for not keeping promises in addition to those contained in its interstate tariffs, and the long distance carrier argued in response that these state claims were preempted by the filed rate doctrine. At the outset, the Court held that the term "rates" in the Communications Act must be interpreted broadly and that the Ninth Circuit thus erred in concluding that the filed rate doctrine did not apply to this case and preempt the state law claims:

---

68 Edwards Petition at 42.

69 47 U.S.C. § 414.

> Rates . . . do not exist in isolation. They have meaning only when one knows the services to which they are attached. Any claim for excessive rates can be couched as a claim for inadequate services and vice versa.[70]

The Court additionally rejected the customer's argument that the Section 414 savings clause of the Act preserved its state law claims notwithstanding the federal preemption – the very argument that the Edwards attorneys advance in their petition:

> *Section 414 . . . preserves only those rights that are not inconsistent with [federal law*]. A claim for services that constitute unlawful preference or that directly conflict with the [federal] tariff – the basis for both the tort and contract claims here – cannot be "saved" under § 414 . . . In other words, the [Communications] act cannot be held to destroy itself.[71]

Federal courts have reached the same result in connection with state law claims implicating wireless carriers and Section 332(c)(3) of the Act: "To read [Section 414] expansively would abrogate the very federal regulation of mobile telephone providers that the act intended to create."[72]

The Commission had earlier reached the same conclusion. For example, it held long ago that while Section 414 "preserve[s] actions based on breach of contract for matters *not* modified by the Act, . . . Section 414 does *not* give rise to [state] actions based on pre-existing duties

---

70 *AT&T* v. *Central Office Telephone,* 524 U.S. 214, 233 (1998).

71 *Central Office Telephone,* 424 U.S. at 227-28 (internal citations omitted; emphasis added). *See also Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000)(Savings clause in the National Traffic and Motor Vehicle Safety Act did not preserve a state law tort claim from either express or implied (conflicts) preemption).

72 *Bastien* v. *AT&T Wireless,* 205 F.3d 983, 987 (7th Cir. 2000). *See also Geier,* 529 U.S. at 870)(The Court has "repeatedly 'declined to give broad effect to savings clauses.'"). The Edwards attorneys recite numerous Section 414 cases in their petition, but none of these cases are relevant. One set of cases involves landline carriers that are subject to a very different regulatory regime than wireless carriers. The second set of cases, while involving wireless carriers, addresses not whether federal law preempts state law, but rather which court – a state court or the federal court – should address this preemption issue.

which have been modified by the Act."[73] More recently, the Commission made the same point in a slightly different way, ruling that Section 414 does "not, however, permit all possible state causes of action to proceed as if federal regulation of communications did not exist."[74]

> Section 414 of the Act, which preserves remedies "existing at common law or by statute," does not foreclose our preemption action here. Such "savings clauses" do not preclude preemption where allowing state remedies would lead to a conflict with or frustration of statutory purposes.[75]

Rather, the "key inquiry is whether Congress intended to supplant state laws on the same subject," with the Commission further noting that "Congress' intent to supersede state law need not be explicit, but may be inferred from the nature of the federal statutory regime."[76]

The Edwards attorneys assert without explanation that "resolution of the [state] claims before the [state] court will not affect federal regulation of telecommunications carriers."[77] This assertion is not credible. As discussed above, the Commission has recognized that ETFs are lawful and given that Section 2(b) of the Act no longer limits FCC authority, this FCC finding applies to ETFs as applied to both interstate and intrastate services. The national wireless plans that wireless carriers that customers have found so attractive would no longer be feasible if each State (including a jury of six or 12 people) could decide whether ETFs are lawful in their State.

To confirm, in order to discharge the Congressional directive that the Commission establish a "Federal regulatory framework" for the wireless sector, the Commission would be required

---

73 *Midwestern Rely*, 69 F.C.C.2d 409, 4127 n.25 (1978)(emphasis added).

74 *Richmond Brothers Records* v. *Sprint*, 10 FCC Rcd 13639, 13642 ¶ 15 (1995). *See also Wireless Consumers Alliance*, 15 FCC Rcd 17021, 17040 ¶ 37 (2000)("Section 414 . . . cannot preserve state law causes of action or remedies that contravene express provisions of the Telecommunications Act.").

75 *Lowest Unit Charge Requirements of Section 315(b)*, 6 FCC Rd 7511, 7513 ¶ 20 (1991).

76 *Operator Services Providers*, 6 FCC Rcd 4475, 4476 ¶ 9 (1991).

77 Edwards Opposition at 44.

to preempt all State regulation of ETFs even if, contrary to prior precedent, ETFs were now deemed an "other term and condition" of wireless service, as opposed to an integral component of wireless rates.

III. AN EXPEDITIOUS DECLARATORY RULING IS NECESSARY TO PRESERVE THE CONTINUED AVAILABILITY OF NATIONAL WIRELESS PLANS

A declaratory ruling is appropriate to "terminate a controversy or remove uncertainty."[78] Sprint is aware of seven reported federal court decisions that have addressed the question whether state law challenges to the lawfulness or reasonableness of early termination fees ("ETFs") are preempted by Section 332(c)(3) of the Communications Act – and many more class action cases are now pending.[79] Three of these federal courts have ruled it "clear" that ETFs are "directly connected to the rates charged for mobile services, and any challenge to such fee is pre-empted by federal law."[80] On the other hand, the other four federal courts have suggested that ETFs may not be rates, although these opinions arose in the context of complete preemption for purposes of determining whether federal question jurisdiction existed over the State claims as-

---

[78] 5 U.S.C. § 554(e). *See also* 47 C.F.R. § 1.2 ("The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.").

[79] There are additional unreported cases, some of which CTIA appends to its petition. The FCC should be advised that most of the court decisions that the Edwards class action attorneys cite in their opposition do not involve ETFs and thus add little to the current debate.

[80] *Chandler* v. *AT&T Wireless*, No. 04-180-GPM, 2004 U.S. Dist. LEXIS 14884, at *3 (S.D. Ill, July 21, 2004). *See also Redfern* v. *AT&T Wireless*, No. 03-206-GPM, 2003 U.S. Dist. LEXIS 25745, at 2 (S.D. Ill., June 16, 2003)("[T]he early termination fee affects the rates charged for mobile service and, thus, Plaintiff's challenge to the fee is completely preempted (that is, federal law occupies the field."); *Aubrey* v. *Ameritech Mobile*, No. 00-CV-75080, 2002 U.S. Dist. LEXIS 15918 (E.D. Mich., June 17, 2002)("[B]y alleging that the rates which AMC charged for terminating a subscriber's service were exorbitant, it is clear that the Plaintiff is challenging the rates charged by AMC for its wireless services.").

serted, a determination that utilizes a standard different from, and much higher than, the standard used to resolve issues of ordinary conflict preemption.[81]

These four courts have used different reasoning for their decisions:

- It is "not even clear that Plaintiffs' case is preempted" because the wireless carrier's ETF is located in a section of its "Tariff Rate Plan" styled "Terms and Conditions;" thus, the case should be remanded to state court and the wireless carrier should raise its preemption argument as a defense to the plaintiffs' claim that ETFs are "not . . . reasonable" under state law.[82]
- The court "finds that the Communications Act, specifically section 332, does not so completely preempt regulation of cellular service such that the State's complaint is necessarily federal in character for purposes of removal jurisdiction;" in *dicta*, the court concludes that a claim that ETFs are unlawful under state law does "not attempt to regulate rates;" accordingly, the wireless carrier's preemption arguments "must be raised as a defense to the state law claims in state court."[83]
- The wireless carrier should raise its preemption argument as a defense in state court because it is "arguable" that the State's claim – ETFs are unlawful under state law – would "not affect rates at all" because if the State is successful in its state lawsuit, the wireless carrier would only be required to restructure its rate elements by requiring customers to pay more "'up front' rather than spread incrementally throughout the life of the service agreement."[84]
- Although the wireless carrier "makes a compelling argument as to why the Court should find [the plaintiff's] claims affect the AT&T rate structure, at least two courts have rejected the identical argument;" accordingly, the wireless carrier should raise its preemption argument in state court as a defense to

---

81 These opinions did not resolve the issue of whether an ETF was a "rate," but instead opined that the rate issue was one of conflict preemption and did not confer federal removal jurisdiction. As the opinions point out, these Courts were of the view that the issue of preemption under Section 332 was properly raised in the state court as a defense to the plaintiffs' claims.

82 *Esquivel* v. *Southwestern Bell Mobile,* 920 F. Supp. 713 (S.D. Tex. 1996). *See also id.* at 716 ("Nothing in the Tariff filed by Defendant indicates that the FCC has ever passed upon the amount of liquidated damages specified in Defendants' agreements.").

83 *State of Iowa* v. *U.S. Cellular,* No. 4:00-CV-90197, 2000 U.S. Dist. LEXIS 21656, at *15-16, 20 (S.D. Iowa, Aug. 7, 2000).

84 *Cedar Rapids Cellular* v. *Miller,* No. C00-58 MJM, 2000 U.S. Dist. LEXIS 22824, at *21 (N.D. Iowa, Sept. 15, 2000), *vacated on other grounds,* 280 F.3d 874 (8th Cir. 2002).

> the plaintiff's argument that the ETF is unlawful under the state unfair debt collection act.[85]

As a result of these four federal court decisions, it will be local state courts (and perhaps juries) that will apply federal law and determine whether ETFs are lawful in their respective State.

The potential ambiguity created by these decisions requires Commission action to protect the benefits of national wireless services for consumers. Chairman Martin has recognized that the wireless industry has transformed itself from an expensive local service to an affordable national service and that customers have benefited from this transformation to a national service:

> [Wireless] carriers use economies of scale and scope to offer lower costs to more consumers. Their operations use uniform service plans, customer service training, billing systems, and "back office" management tools.[86]

The Chairman has additionally observed, correctly, that the wireless sector has been able to develop in this manner and become "the poster child for competition" because it has been subject to "a consistent regulatory treatment throughout the country."[87] The disparate court decisions discussed above, coupled with the numerous additional class action lawsuits now pending throughout the country, place at real risk the continued viability of national service offerings and the benefits these national offerings provide to the American consumer.

Congress has charged the FCC, not the courts (federal or state), to "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[88] The Commission has recognized that "courts lack the Commission's expertise, developed over decades, in evaluating carriers' practices" and that national carriers would face "inconsistent court decisions

---

85 *Phillips* v. *AT&T Wireless*, No. 4:04-cv-4020, 2004 U.S. Dist. LEXIS 14544, at *41 (S.D. Iowa, July 29, 2004), *citing* the *U.S. Cellular* and *Cedar Rapids Cellular* decisions.

86 Martin Dow Lohnes Presentation, at 1 and 6.

87 *Id.* at 2 and 6.

88 H.R. CONF. REP. NO. 103-213, 103d Cong., 1st Sess. at 490 (1993).

and incur unnecessary costs" if it permitted courts to develop the future evolution of the wireless industry:

> This could result in consumers receiving differing levels of service and protection depending upon the jurisdiction in which they live, contrary to the intent of Congress in amending section 332(c).[89]

Sprint submits that a declaratory ruling by the nation's expert agency concerning the scope of state law over ETFs is essential to ensure the establishment of uniform, federal framework governing all wireless services.

Sprint emphasizes that the need for an expeditious declaratory order is pressing. CTIA's petition recites numerous state class action lawsuits that are currently pending across the country, with extensive (and costly) discovery now underway.[90] A prompt Commission ruling on CTIA's petition will help ensure that wireless carriers and customers are subject to one, federal regime governing the lawfulness of national plans that include ETFs. The importance of this proceeding cannot be understated. The continued viability of national plans that have benefited customers nationwide is at risk.

IV. CONCLUSION

For the foregoing reasons, Sprint Corporation respectfully requests that the Commission expeditiously grant the declaratory ruling petition filed by CTIA.

---

89 *PCIA Forbearance Order*, 13 FCC Rcd 16857, 16872 ¶ 30 (1998).

90 *See* CTIA Petition at 2-7.

Respectfully submitted,

SPRINT CORPORATION

/s/ Luisa L. Lancetti
Luisa L. Lancetti
Vice President, Wireless Regulatory Affairs
Charles W. McKee
General Attorney

Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004
202-585-1949

August 5, 2005